

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS**

CHERYL O'TOOLE,

Plaintiff

V.

EOS CCA,

Defendant

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

(Unlawful Debt Collection Practices)

COMPLAINT

CHERYL O'TOOLE ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against EOS CCA ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), and the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* ("TCPA")

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original

1 jurisdiction of all civil actions arising under the laws of the United States, and 28 U.S.C. § 1367
2 grants this Court supplemental jurisdiction over any state law claims.

3 3. Defendant conducts business and has its main office in the Commonwealth of
4 Massachusetts and therefore, personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

6 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
7

8
9 **PARTIES**

10 6. Plaintiff is a natural person residing in Cranston, Rhode Island.

11 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

12 8. Defendant is a national debt collection company with its United States corporate
13 headquarters located at 700 Longwater Drive, Norwell, Massachusetts, 02061.

14 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
15 and repeatedly contacted Plaintiff in an attempt to collect a debt.

16 10. Defendant acted through its agents, employees, officers, members, directors,
17 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
18

19 **FACTUAL ALLEGATIONS**

20 11. At all relevant times, Defendant was attempting to collect a student loan debt
21 from Plaintiff allegedly owed to Sallie Mae.
22

23 12. Plaintiff never took out a student loan with Sallie Mae and owes no debt to Sallie
24 Mae.

25 13. Upon information and belief, the alleged debt at issue arose out of transactions,

1 which were primarily for personal, family, or household purposes.

2 14. Between April and May 2012, Defendant's collectors placed repeated and
3 harassing telephone calls to Plaintiff's cellular telephone number.

4 15. Plaintiff received phone calls and voice messages from Defendant on a number
5 of occasions from the following phone number (877) 290-0920. The undersigned has confirmed
6 that the number belongs to Defendant.

7 16. During this time, Plaintiff received an average of two telephone calls per day
8 from Defendant.

9 17. There was no purpose to calling twice a day, or to programming an auto-dialer to
10 do so, except to harass.

11 18. Defendant often called Plaintiff using an automated calling system and/or a
12 prerecorded or artificial voice.

13 19. Plaintiff never consented to receiving calls from Defendant by means of an
14 automated calling system and/or a prerecorded or artificial voice.

15 20. Defendant's telephone calls were not placed for "emergency purposes," as
16 specified in 47 U.S.C. §227(b)(1)(A).

17 21. Defendant has advised Plaintiff that it would report this debt to the credit bureaus
18 despite the fact Plaintiff disputed owing this debt.

19 22. Plaintiff was never advised by Defendant of her rights to dispute the claim, nor
20 the means to communicate a dispute of this claim in writing.

21 23. Defendant was told to cease calling, but continued to call anyway.

22 24. Plaintiff requested the Defendant to provide written documents in support of their
23 claim, but Defendant did not provide any such documents.
24
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1 25. Defendant's actions as described herein were taken with the intent to harass,
2 confuse, upset, and coerce payment from Plaintiff.

3
4 **COUNT I**
5 **DEFENDANT VIOLATED § 1692d OF THE**
6 **FAIR DEBT COLLECTION PRACTICES ACT**

7 26. Section 1692d of the FDCPA prohibits debt collectors from engaging in any
8 conduct the natural consequence of which is to harass, oppress or abuse any person, in
9 connection with the collection of a debt.

10 27. Defendant violated § 1692d of the FDCPA when it called Plaintiff repeatedly and
11 continuously, and when it engaged in other harassing or abusive conduct.

12
13 **COUNT II**
14 **DEFENDANT VIOLATED § 1692d(5) OF THE**
15 **FAIR DEBT COLLECTION PRACTICES ACT**

16 28. Section 1692d(5) of the FDCPA prohibits debt collectors from causing a
17 telephone to ring or engaging any person in telephone conversation repeatedly or continuously
18 with the intent to annoy, abuse or harass any person at the called number.

19 29. Defendant violated § 1692d(5) of the FDCPA when it caused Plaintiff's telephone
20 to ring repeatedly and continuously with the intent to harass or annoy Plaintiff.

21
22 **COUNT III**
23 **DEFENDANT VIOLATED § 1692e and 1692e(10) OF THE**
24 **FAIR DEBT COLLECTION PRACTICES ACT**

25 30. Section 1692e of the FDCPA prohibits debt collectors from using false, deceptive or
misleading representation or means in connection with the collection of any debt.

1 amount unless it is expressly authorized by agreement or law.

2 38. Defendant violated § 1692f(1) of the FDCPA when it sought to collect a debt not
3 created by any contract and not permitted by law.

4
5 **COUNT VII**
6 **DEFENDANT VIOLATED § 1692g(a) OF THE**
7 **FAIR DEBT COLLECTION PRACTICES ACT**

8 39. Section 1692g(a) of the FDCPA states that within five days after the initial
9 communication with a consumer in connection with the collection of a debt, a debt collector
10 shall send the consumer a written notice containing the amount of the debt, the name of the
11 creditor to whom the debt is owed, and that if the debt is disputed, the debt collector will obtain
12 verification of the debt.

13 40. Defendant violated § 1692g(a) of the FDCPA when it failed to send the Plaintiff
14 any written notice containing or describing how Plaintiff could obtain verification of the debt,
15 how she could dispute the debt, the amount of the debt, or the original creditor of the subject
16 debt.

17
18 **COUNT VIII**
19 **DEFENDANT VIOLATED**
20 **THE TELEPHONE CONSUMER PROTECTION ACT**

21 41. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a
22 person or entity to bring in an appropriate court of that state “an action based on a violation of
23 this subsection or the regulations prescribed under this subsection to enjoin such violation.”

24 42. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person
25 or entity to bring in an appropriate court of that state “an action to recover for actual monetary

3 43. Upon information and belief, despite the fact that Plaintiff never consented to
4 Defendant making calls to her telephone, Defendant repeatedly placed non-emergency calls to
5 Plaintiff's telephone without Plaintiff's consent.

6 44. The Act also authorizes the Court, in its discretion, to award up to three (3) times
7 the actual damages sustained for violations.

8 45. Here, upon information and belief, Defendant repeatedly and regularly placed
9 non-emergency, automated calls to Plaintiff's cellular telephone.

10 46. Upon information and belief, Defendant contacted Plaintiff on her cellular
11 telephone several times.

12 47. Defendant did not have Plaintiff's express consent prior to contacting her on her
13 cellular telephone using an automatic telephone dialing system.

14 48. Defendant's conduct violated §227(b)(1)(A)(iii) of the TCPA by making any call
15 using any automatic telephone dialing system or an artificial prerecorded voice to a telephone
16 number assigned to a cellular telephone service.

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19 WHEREFORE, Plaintiff, CHERYL O'TOOLE, respectfully prays for a judgment as
20 follows:

- 21 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
22 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
23 15 U.S.C. § 1692k(a)(2)(A.);
24
25

- 1 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
2 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
3 d. Statutory damages of \$500.00 for each violation of the TCPA, pursuant to 47
4 U.S.C. §227(c)(5)(B);
5 e. Any other relief deemed appropriate by this Honorable Court.
6

7 **DEMAND FOR JURY TRIAL**
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9 PLEASE TAKE NOTICE that Plaintiff, CHERYL O'TOOLE, demands a jury trial in
10 this case.
11

12 RESPECTFULLY SUBMITTED,

13 DATED: 04/10/13

KIMMEL & SILVERMAN, P.C.

14 By: /s/ Craig Thor Kimmel

Craig Thor Kimmel

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